SUPREME COURT, U. S.

No. 73-1073

Supreme Court, U. S.
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MICHAEL RODAK, JR., CLERK

In the Supreme Court of the United States

OCTOBER TERM, 1973

FRANCIS J. WARIN, PETITIONER

v.

DIRECTOR, ALCOHOL, TOBACCO, AND FIREARMS DIVISION, INTERNAL REVENUE SERVICE

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

MEMORANDUM FOR THE RESPONDENT IN OPPOSITION

ROBERT H. BORK,
Solicitor General,
Department of Justice,
Washington, D.C. 20530.

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Petitioner brought this action in the United States District Court for the Northern District of Ohio individually and on behalf of "all persons who are not engaged in the business of dealing in arms and ammunition but who are 'keeping and bearing arms' for lawful purposes" (Complaint, p. 1). He requested a declaratory judgment that the Gun Control Act of 1968, Pub. L. 90-618, 82 Stat. 1213, and Title VII of the Omnibus Crime Control and Safe Streets Act of 1968, Pub. L. 90-351, 82 Stat. 197, are unconstitutional. He relied upon Article I, Section 8, Clause 1, and Article I, Section 9, Clause 3, of the Constitution and upon the Second, Fourth, Fifth, Thirteenth, and Fourteenth Amendments.

The district court dismissed petitioner's action "since every constitutional challenge he raises against the Acts has already been presented and argued to a federal court in one form or another and held to be unjustified" (Pet. App. 19).[1] The court of appeals affirmed, stating that "the District Court provided ample authority for the denial of each of Appellant's constitutional claims" (Pet. App. 20).

The decision below is plainly correct. Federal regulation of the interstate traffic in firearms is of great importance in federal efforts to prevent violent crime and to assist the States in regulating firearms within their borders, and it falls well within the powers of Congress under the Commerce Clause. See *United States* v. *Biswell,* 406 U.S. 311; *United States* v. *Bass,* 404 U.S. 336; *United States* v. *Freed,* 401 U.S. 601. We rely upon this Court's opinions in those cases, and upon the decisions cited in the opinions below, in urging that further review is unwarranted.

The petition for a writ of certiorari should be denied.

Respectfully submitted.

ROBERT H. BORK,
Solicitor General.

FEBRUARY 1974.

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[1]The district court also noted that there is a substantial jurisdictional question whether petitioner's action presents a case or controversy (Pet. App. 16). See, *e.g., O'Shea* v. *Littleton,* No. 72-953, decided January 15, 1974.